

ADDENDUM TO FINAL STATEMENT OF REASONS

Title 13, Division 1, Chapter 2.1 Commercial Driver Licenses
Sections 25.06 through 25.22, Employer Testing Program

The following additional information is added to the Final Statement of Reasons pertaining to the Employer Testing Program regulation:

The word “Adopt” and reference to the article name and number being modified have been added to the title. This additional word makes it clear these are new regulations. The number and title of the article makes it clear as to the placement of the regulation in Title 13.

Throughout the regulation, a minor correction of period endings has been added to the section headings of 25.06 through 25.22.

The following forms are being incorporated by reference since it is impractical and cumbersome to publish in the California Code of Regulations a form that will only be used for a specified purpose:

DL65ETP, Rev. 4/03 – ETP CDL Pre-Trip Inspection Evaluation Score Sheet
DL807 ETP, Rev. 7/02 – Employer Testing Program Commercial DPE Maneuver Checklist.
DL810ETP, New 1/02 – Employer Testing Program Request for Reinstatement-Examiner.
DL811ETP, Rev. 9/02 – Employer Testing Program Examiner Application.
DL813ETP, Rev. 11/01 – Employer Testing Program Request for Reinstatement Employer Number.
DL814ETP, Rev. 2/03 – Employer Testing Program Commercial Driving Performance Evaluation Route and Directions.
DL817ETP, Rev, 7/02 – Employer Testing Program Request for Reactivation Employer Number.

It is anticipated that the information currently being provided by the customers will remain the same.

Section 25.06

Introduction has been revised to correct a minor punctuation error.

Subparagraph (a) has a change in the form revision date, not listed above and punctuation.

Subparagraph (c) has been revised to provide additional information to define a volunteer employee. This information will assist employers in defining the type of employee that can be considered a volunteer for purposes, such as training.

Subparagraph (i) has been revised to add minor punctuation marks.

Section 25.08

The title of this section has been revised to include the previous section heading which is being replaced.

Subparagraph (a)(1) has been revised to show the full title of the DL520ETP form for clarity.

Subparagraph (a)(1)(C), (E), (L) and (N) contain minor grammar changes.

Subparagraph (a)(1)(R) has been corrected to reflect the correct Vehicle Code Section reference.

Subparagraph (a)(T)(2) has been revised to show the full title of the DL814ETP form and to indicate the form is being incorporated as reference. This form is used by the employer to document the primary and alternative driving test routes. The employer is required to document the driving test routes used by an employer to conduct drive tests. Each drive test must include specific maneuvers in order to comply with state and federal requirements. In order for an employer to be approved to conduct the drive tests, the department must verify the routes to be used. The DL807ETP is to be used by the employer to describe the route as well as the directions to be used. This form is a checklist for both the employer and the department to make certain that all required maneuvers have been included in the drive route.

Subparagraph (b) has been moved to (d) and replaced with language from subparagraph (e).

Subparagraph (d) has been revised to add the words “with a cover letter listing the items needing correction” to make it clear to the employer what the department will do if the application is incomplete.

Subparagraph (c) has been moved to (e) and replaced with language from subparagraph (f).

Subparagraph (d) has been re-lettered (f).

Subparagraphs (e) and (f) have been deleted.

Subparagraph (j) has been revised to include the DL814ETP title for clarity. The requirements of this subparagraph have been revised to be consistent with the requirements of subparagraph (a)(T)(2) which are required for new employers. It is important to require documentation of the driving route to make sure the route still contains the requirements necessary to conduct a drive test and to approve the driving route if there are any changes.

Subparagraph (k) has been revised to add the words “with a cover letter listing the items needing correction” to make it clear to the employer what the department will do if the application is incomplete.

Subparagraph (l) has been revised to add the words “approve the application” to clarify that the department must approve the application before notifying the employer of its assigned employer number.

Section 25.10

The title of this section has been revised to include the previous section heading which is being replaced.

Section 25.10(a), (b), (c), (d) and (e)

Subparagraphs (a), (b), (c), (d) and (e) have been revised to show the complete title and revision date of the forms identified in each subparagraph for clarity.

Section 25.11

The title of this section has been revised to include the previous section heading which is being replaced.

Subparagraph (a)(1) has been revised to reflect a minor language change for clarity.

Section 25.13

Subparagraph (a) references the Commercial Driver License Performance Evaluation criteria which is not being incorporated by reference as it is exempt from disclosure under Government Code Section 11340.9(e). This document is used by employers during the testing performance to evaluate driver performance and is not available for general distribution.

Section 25.14

Subparagraphs (a), (b) and (c) contain changes in the revision date of form DL 170 ETP.

Subparagraph (c)(4) has been corrected with minor punctuation marks.

Subparagraph (c)(19) has been updated to include the area code and extension. This was an oversight and these items are required on the form identified in this section.

Section 25.15

Subparagraph (a)(12) has been revised to include the complete title and revision date of the DL65ETP form for clarity. The form has been revised and the regulation now reflects the current version of Rev. 4/03. The form has been changed to eliminate unnecessary language to the pre-trip inspection score sheet that pertains to the driving portion of the exam. There are two parts to the form, one is for the pre-trip evaluation and the other for the driving performance. The form was developed so that every employer is using the same grading system. The purpose of the pre-trip test is to make sure all of the equipment is in working order and that the potential driver is aware of where the equipment is located and how it operates. The driving performance evaluation sheet is used to determine if the employee can handle the vehicle by having the employee perform various driving maneuvers to be certified to drive a certain type of vehicle.

Subparagraph (a)(14) has been revised to include the complete title and revision date of the DL814ETP form for clarity.

Subparagraph (c) has been revised to delete a hyphen for consistency.

Subparagraph (d)(2) has a revision date change for the DL 170 ETP form.

Section 25.16

Subparagraph (c) has a minor punctuation change.

Subparagraph (f) has been revised to reflect a minor change in language.

Subparagraph (g) has a revision date change for the DL 170 ETP form.

Section 25.17

Subparagraph (a) has been revised to correct the word “a” to “an” for grammatical reasons. The form has been revised and the subparagraph has been updated to reflect the latest revision date of 7/03. The title of the DL520CETP form has been changed to add the words “Employer Testing Program” which is consistent with the other forms developed for this program and the entire title of the form has been added for clarity. The form has been changed to correct the name of the Federal Highway Administration to the Federal Motor Carrier Safety Administration, which is the federal agency responsible for this program.

Subparagraph (a)(2) the word “business” has been changed to “mailing” address. This was changed on the latest revision of the form to be consistent with the other ETP forms requiring the mailing address.

Subparagraph (a)(3) has been moved to (4). The requirement of a terminal physical address has been added to the form. Because the mailing and terminal location addresses can be different, it is necessary to obtain the terminal location address to make sure the correct employer number is cancelled.

Subparagraph (a)(4) has been re-lettered (a)(5).

Subparagraph (a)(5) has been re-lettered (a)(6).

Subparagraph (a)(6) has been re-lettered (a)(7).

Subparagraph (a)(7) has been re-lettered (a)(8).

Subparagraph (a)(8) has been re-lettered (a)(9).

Subparagraph (b) has been revised to show the full title of the DL817ETP that is being incorporated by reference. This form is for employers who have voluntarily cancelled their employer number and wish to reactivate. The form requires standards elements that are necessary in order to identify the correct employer and requires the name and signature of the administrator. The form specifies if an employer number will expire within 60 days, the application form, DL520ETP, and the other documentation as specified in Section 25.08 (j) of these regulations are required to be submitted. The full title of the DL814ETP is being added for clarity. The word “a” has been changed to “an” for grammatical reasons. The words “non-refundable application fee” were moved for clarity.

Section 25.18

Subparagraph (a)(2) has been corrected to reflect the correct Vehicle Code Section reference.

Subparagraph (b) has been revised to add a hyphen for grammatical reasons. The complete title of the guidelines is being added for clarity.

Subparagraph (e) has been revised to show the full name of the DL813ETP form and the correct revision date of the form, which is being incorporated by reference. This form is to be used by an employer requesting reinstatement of their employer number because of a suspension due to deficiencies discovered during an audit. The form requires the administrator's signature verifying that corrections have been made and reported to the Interstate Audit Section. The information required on the form is standard identification elements that allow the department to identify the correct employer number to be reinstated.

Subparagraph (f) has a minor grammar change.

Subparagraph (g) has been revised to replace the word "operator" with the phrase "operation of a motor vehicle" for clarity.

Subparagraph (h) has been revised to show the full title of the DL810ETP form, which is being incorporated by reference. This form is required when an individual is requesting reinstatement as an examiner. The form requires the individual to check the driver license class(es) he/she has held for the past three years. This is required in order to certify the examiner for the driver license class he/she can administer. The form requires the individual to submit the completed application and a \$55 fee for the DMV sponsored examiner-training class and to identify the training class date. The form requires basic identifying information to be used by the department to identify the applicant that will be certified as an examiner. The word "a" has been revised to "an" for grammatical reasons.

Section 25.19

Subparagraphs (a)(3), (c), (g)(12) and (13), and (h)(4) contain revision date changes for the DL 170 ETP form.

Subparagraph (e) has been revised to indicate a pull notice printout. This clarifies the specific printout that is referenced in this section.

Section 25.20

Subparagraph (b) has been revised to include the entire title of the DL520ETP for clarity.

Subparagraph (c) has been revised with minor language changes for clarity.

Section 25.21

Subparagraphs (b) and (h) contain a revision date change for the DL 170 ETP form.

Section 25.22

Subparagraph (a)(1) has been revised to indicate that the DL811ETP form has been incorporated by reference. This form is to be used by an individual to request qualification as an examiner to conduct drive tests for the employer. This document requires basic personal information in order for the department to identify the individual requesting approval. The application specifies that the individual check which class or classes of license he/she is eligible to administer and to list the employers who will be employing him/her. The form also requires the examiner to specify the dates he/she is available to attend training and requires submittal of a \$55 training fee. The form requires a signature under penalty of perjury that the examiner has the appropriate class of commercial driver license and endorsements. The DL810ETP form, which was identified in Section 25.18(h) of these regulations, is being added in order to make it clear that either form may be used to qualify as an examiner depending on the circumstance. Additional language has been added to require the department to inform an applicant within 30 days if he/she is eligible to be enrolled in the examiner training class or 15 days if the applicant does not qualify in accordance with the Permit Reform Act of 1981 (Government Code sections 15374 through 15378). If denied, the department has 15 days to inform the applicant of the denial.

Subparagraph (a)(4) has been revised to add the word “motor” for clarity.

Subparagraph (a)(6)(C) has been revised to reflect the entire title of the DL811ETP form for clarity.

Subparagraph (h) has a revision date change for the DL 170 ETP form.

Subparagraph (k) has been revised to indicate reference to the sections where the details of the DL51 and DL546 can be located.

Summary of Comments Received and Department Response to 15-Day Notice

The modified text was made available to the public from September 17, 2003 through October 1, 2003. Only one written comment was received during this period.

W-I Chris Knight, General Manager for Area Transit Management, Inc. – Letter dated September 24, 2003.

COMMENT:

Regarding 25.18(c), training drivers should not be suspended if a company’s Employer Testing Program is suspended because drivers would then go directly to DMV for testing and either pass or fail with DMV.

RESPONSE:

Title 49 of the Code of Federal Regulations, Part 383, Subpart E, §383.75(a)(v) states “Reserve unto the State the right to take prompt and appropriate remedial action against the third-party testing in the event that the third-party fails to comply with State or Federal standards for the CDL testing program or with any other terms of the third-party contract.” California has prepared “Guidelines for Employer Testing Program Sanctions” in accordance with the Employer Testing Program proposed regulations. The sanction guidelines were developed to

apply uniform sanctions and to inform Employer Testing Program participants of the consequences of violating program aspects. A copy of the guidelines was made available, upon request, to each program participant during the public comment period in December 2002.

The department cannot keep a company from training its drivers, however, any training conducted during a period of suspension probably would not qualify toward meeting the requirements for the Employer Testing Program.

COMMENT:

Regarding 25.15(d)(2), 25.19(h)(1) and 25.21(d), these sections all call for the driver being certified to have been an employee at the time of training. Mr. Knight would like that specific statement removed from the regulations. He does not believe it is necessary for the trainee to be an employee during training. His training program meets the DMV verification of transit requirements and DMV auditors have found the program to be in order. Each trainee who makes it to the DMV drive test is hired on the day of the drive test. His company does not drive test persons who are not hired and again, DMV's auditors have inspected payroll records and found them to be in order. His protest of this regulation is motivated by financial reasons. A large number of new drivers are trained each year due to the nature of the business having contracts with seasonal resorts. Rate increases have been passed to customers due to insurance increases and the company cannot continue to pass on additional costs or it will find itself without customers at all. He has participated in the Employer Testing program for many years and has always felt this was a win-win situation for both the company and the state. By having the program, the state spends less money by using less commercial examiners and employers benefit by having the ease of scheduling drive tests. He contends that this program is an Employer Test Program" not an "Employer Training and Testing Program," and that DMV should not require or even have the authority to require employers to employ and pay persons enrolled in their training programs as all training is voluntary on the prospective employees' part.

RESPONSE:

The proposed regulations Section 25.06(c) defines an employee as a person who performs services for wages or salary under a contract of employment, expressed or implied, for an employer. (See Labor Code Section 1132.2.) In addition, a volunteer of an employer who has an established volunteer workforce will be considered an employee, provided the employer has covered the employee under its Workers Compensation Insurance policy and its employer's liability insurance policy.

The State of California has a responsibility to ensure that the drivers tested in the Employer Testing Program have sufficient training to maneuver safely on roads and highways. One of the factors in the department's decision to require that drivers be employees of the ETP participant during training was to ensure the employer would have a vested interest in ensuring that their employees were thoroughly trained. The definition of employee was expanded to include unpaid workers who are covered under an Employer's Worker's Compensation and liability insurance policies. The department's intention is not to cause a hardship to an employer; however, it is to protect the public and enhance highway safety through efforts to ensure that only qualified drivers are certified through this program.